IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 360 (SS) of 2002
(Old No. 27805/1993)

Smt. Sulochana Devi Negi,
W/o late Sri Prem Singh Negi,
Resident of village – Surari,
Post – Chailusain,
Patti Dadralsaun,
Tehsil – Lansdwon,
District – Pauri Garhwal. **……..Petitioner.**

Versus

1. Union of India through Secretary, Defence, Secretariat, New Delhi.
2. Chief of Army Staff, New Delhi.
3. Chief Record Officer, Bengal Engineers Group, Roorkee.

……..Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri Alok Mehra, learned counsel for the petitioner and Sri Pradeep Joshi, learned Standing Counsel for Union of India, on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

i. *a writ, order or direction in the nature of Mandamus directing the respondents to make payment of pensionary benefit to the petitioner with effect from 01.06.1977 till date and onwards on each and every month.*

ii. *Issue any other alternative and suitable writ order or direction as this Hon'ble Court may*

deem fit and proper in the circumstances of the case.

iii. *Award the cost of the petition throughout to the petitioner.*

The case of the petitioner is that petitioner's husband was enrolled in the Army as a 'Boy' on 15.01.1963 and recruited as Sepoy in Indian Army 28.03.1965. After discharge from service, petitioner's husband made several representations to the respondents for grant of pensionary benefits, however, no heed was paid by the respondents and consequently, petitioner's husband was constrained to file present writ petition.

Respondents have file counter affidavit and the stand taken by the respondents is that petitioner's husband was discharged under the provision of Army Rule 13 (3) Item (III) (V) as undesirable soldier. Discharge order of petitioner's husband was sanctioned by Commander, HQ 31, Sub Area, after duly examining the reply received from the petitioner's husband to the show cause notice given to him.

Minimum qualifying service as provided in Regulation 132 of Pension Regulation for Army Part I 1961 for earning the service pension in 15 years and since the total qualifying service rendered by the petitioner's husband is 11 years and 324 days excluding 2 years 72 days boy service, 16 days absence without leave and 3 months period spend in civil jail, as such, petitioner's husband is not eligible for service pension in view of Regulation 132 of Pension Regulation for Army Part I 1961.

Since the petitioner's husband was discharged from service and had not completed 15 years of qualifying services which is required for getting service pension as such, petitioner's husband is not entitled to get any relief under Article 226 of the Constitution of India.

Writ petition devoid of merit, as such, is dismissed. No order as costs.

(M.M. Ghildiyal, J)

December 5, 2006
SKSharma